TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~320~~ 121

THE UNITED STATES, APPELLANTS,

vs.

FERDINAND BROWN.

APPEAL FROM THE COURT OF CLAIMS.

FILED DECEMBER 3, 1870.

SUPREME COURT OF THE UNITED STATES.

No. 320.

THE UNITED STATES, APPELLANTS,

vs.

FERDINAND BROWN.

APPEAL FROM THE COURT OF CLAIMS.

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1 In the Court of Claims.

FERDINAND BROWN
vs.
UNITED STATES.

Petition.

To the honorable Court of Claims:

The petition of Ferdinand Brown respectfully sheweth—

I. That your petitioner is a native of the Kingdom of Hanover, and has never declared his intentions of becoming a citizen of the United States.

II. That your petitioner is domiciled in the city of Savannah, and State of Georgia, and has been so domiciled since the year A. D. 1860; and that during the months of December, A. D. 1864, and January and February, A. D. 1865, he was owner of, and had in his possession, in said city of Savannah, twelve (12) bales of upland cotton, five (5) bales of which were marked A. R. J. & E., and weighed two thousand seven hundred and nine (2,709) pounds; three bales were marked E. R. & E. E., and weighed one thousand three hundred and thirty-five (1,335) pounds; four bales were marked E. W. G. E. & H. & E. E., and weighed one thousand seven hundred and twenty (1,720) pounds, being and weighing in the aggregate five thousand seven hundred and sixty-four pounds of upland cotton. Your petitioner had also then and there in his possession and was owner of one bale of Sea-Island cotton the mark or marks upon which he has no recollection of, and which weighed one hundred and ten (110) pounds.

2 III. That on the twenty-third day of said month of February, A. D. 1865, the said cotton was seized and taken from him, against his consent, by order of Lieutenant Colonel H. C. Ransom, quartermaster of the United States in charge of cotton, and was by the United States military authorities shipped to the city of New York, where it was turned over to Simeon Draper, esq., United States cotton agent, who has since sold the said cotton for and on account of the United States, and the net proceeds of said sale have been paid into the United States Treasury.

IV. That said upland cotton was sold for the sum of dollar and cents per pound, and the said Sea-Island cotton was sold for dollar and cents per pound, which said sums your petitioner has been unable to ascertain; and that the total expense of transportation and sale of said cotton, and all other lawful expenses thereon, did not exceed the sum of ten cents per pound, and that the net proceeds thereof amounted in the aggregate to seven thousand six hundred and thirty-six (7,636) dollars; but the exact sum your petitioner has not been able to ascertain, and is not enabled to state.

V. That your petitioner is entitled to have and recover from the United States said sum of seven thousand six hundred and thirty-six dollars, by virtue of the provisions of the third section of the act of Congress approved March the twelfth, A. D. 1863, entitled "An act to provide for the collection of abandoned property and for the prevention of frauds in the insurrectionary districts within the United States."

VI. That your petitioner has never, in any way or form whatsoever, aided, counselled, or abetted, or given countenance and encouragement to the late rebellion, but has done all in his power to aid and assist the lawful authority of the United States.

Wherefore your petitioner prays that this honorable court may grant him, an order, directed to the proper bureau or bureaus of the Treasury Department, or of any other Department of the United States, that he may ascertain all or any material points and evidence not herein stated, and more particularly for what price said cotton was sold by the United States, and that this honorable court may award him a judg-
3 ment against the United States for said sum of seven thousand six hundred and thirty-six (7,636) dollars.

F. BROWN.

Personally appeared before me Ferdinand Brown, who being duly sworn, deposeth and saith that he is the claimant named in the foregoing petition; that he has read the same and knows the contents thereof; that no assignments or transfer of said claim, or any part thereof, or any interest therein, has been made by him; that he is justly entitled to the amount claimed therein from the United States, after allowing all just credits and offsets; and that he knows the facts set forth in said petition to be true.

F. BROWN.

Sworn and subscribed before me this thirteenth day of April, A. D. 1867.

[SEAL.]

LEVI S. HART,
Justice of the Peace and Notary Public,
Savannah, Chatham County, Ga.

Plaintiff:

Post-office address, *Savannah, Ga.*

Plaintiff's Attorneys:

D. HALL RICE.
Post-office address, *Savannah, Ga.*

JUSTUS I. MCCARTY,
Post-office address, *Washington, D. C.*

4 In the United States Court of Claims, December term, A. D. 1868.

FERDINAND BROWN
vs.
THE UNITED STATES. } No. 2631.

And the said defendants, by their Attorney General, come and make answer to the petition of the claimant herein; and, not confessing the same, or any part thereof, deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of the said petition as sets forth and avers that the said United States are indebted to the said claimant in the sum of $7,636 00, the said defendants say that they are not indebted to the said claimant in the said sum of money nor any part thereof.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the said defendants deny the said allegation.

T. LYLE DICKEY,
Assistant Attorney General.

And for a further plea to the said petition the said defendants say that the said claimant ought not to have or maintain his aforesaid action against the said defendants, because they say that the said claimant did not, "within two years after the suppression of the late rebellion, prefer his claim to the proceeds" of the property mentioned and described in the Court of Claims, as provided by the 3d section of the act of Congress, approved March 12, 1863, and entitled "An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States."

T. LYLE DICKEY,
Assistant Attorney General.

And for a further plea to the said petition the said defendants say that the said claimant ought not to have or maintain his aforesaid action against the said defendants, because they say that the said claimant, at the time of the filing of his said petition, was an alien, and that the said seizure and taking possession of the said property named in the said petition, and the said several acts and doings of the defendants, their officers, servants, and agents therein set forth were made and done in the administration of, and in virtue and under color of, the act of Congress entitled "An act to provide for the collection of abandoned property and for the prevention of frauds in insurrectionary districts within the United States," approved Mar. 12, 1863.

Whereby and by virtue of the provisions of the act of Congress entitled "An act regulating judicial proceedings in certain cases, for the protection of officers and agents of the Government, and for the better defence of the treasury against unlawful claims," approved July 27, 1868, the claimant is barred of his said action against the defendants.

T. LYLE DICKEY,
Assistant Attorney General.

5 In the Court of Claims.

FERDINAND BROWN
vs.
THE UNITED STATES. } 2631.

And now, to wit, 23d of May, A. D. 1870, the court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said Ferdinand Brown have, and recover of and from the United States the sum of two thousand two hundred & nineteen dollars eighty-six cents. ($2,219 86.)

By the court:

A true copy of record.

6 In the Court of Claims.

FERDINAND BROWN
vs.
THE UNITED STATES. } 2631.

The defendants hereby make application for the allowance of an appeal to the Supreme Court of the United States from the judgment rendered, being such as to affect a class of cases.

THOMAS H. TALBOT,
Acting Att'y Gen'l.

To the COURT OF CLAIMS.

Filed in clerk's office, August 20, 1870.

AT CHAMBERS, 26 *Sept.*, 1870.

Ordered, that the appeal, as prayed in the case of Ferdinand Brown vs. The United States, 2631, be allowed.

JOSEPH CASEY,
Ch. Justice.

7 Ferdinand Brown's case.—No. 2631.

Findings of fact in the Court of Claims.

This case, coming on to be heard at the December term, 1869, the court makes and determines, upon the proofs, the following findings of fact:

I. The claimant resided during the rebellion in Savannah, Georgia, and was not guilty of giving aid or comfort to the rebellion, or persons engaged therein, but, on the contrary, consistently adhered to the United States.

II. The claimant was, at the time of the capture of Savannah, the owner, and in possession of twelve bales of upland cotton, and one half bale of Sea-Island, purchased by him in October, 1862.

8 III. The cotton described in the second finding was captured by the Army of the United States in December, 1864, at Savannah. It was sold, and the net proceeds are now in the Treasury. They are $175 33 per bale for the upland cotton, and $115 90 for the one-half bale of the Sea-Island, amounting in the aggregate to two thousand two hundred and nineteen $\frac{86}{100}$ dollars, ($2,219 86.)

IV. The claimant is an alien, being a native of Hanover. While he resided in the United States, to wit, in 1866, Hanover, by conquest, became incorporated with, and a part of, Prussia. Under the laws of Prussia, as extended to Hanover, a citizen of the United States may maintain an action at law against the government of Prussia, and may recover judgment therein, and have execution against the property of the State for any debt or demand arising upon contract. The manner of proceeding is as follows:

The State, represented in its pecuniary capacity as the representative of money and property affairs, is called the fiscus; and this fiscus is a quasi corporation, and has standing in courts like any other party—it sues and is sued. For the purpose of maintaining suits against

9 the government, the fiscus stands in the place of the government. For the purpose of compelling the payment of demands against the state, the fiscus is substituted for the state itself. Subjects, as well as foreigners, can sue the fiscus. The power to maintain a suit against the fiscus is a matter of absolute right, rather than of favor; the only difference is, that foreigners have to give security for costs; others need not do it. American citizens have the same right to maintain their action against the fiscus as Prussian citizens. "Under the name of 'fiscus' are comprised all kinds of state revenues which flow from the right of laying taxes or duties, or from special state property, or from royal usufructs." Suits in relation to state property, in which the fiscus is either plaintiff or defendant against others, are treated and decided like suits among private parties, and likewise all the consequences of default and executions takes place against the fiscus just as well as against private parties. The fiscus is brought into court by the service of summons and complaint on the fiscal attorney, or on the president of the government of that circle, the præsidium der regrierung.

The fiscal attorney has to answer, like any other party, and bring in his proof, and has to make his answer. Judgments rendered against the fiscus are satisfied and discharged in the usual way—by execution.

10 And, upon the facts found, the court, as a conclusion of law, decides—

That the claimant should maintain his action in the Court of Claims; and that he should recover the net proceeds of the cotton captured, now in the Treasury, and judgment be rendered in his favor for $2,219 86.

(Indorsed:) 2631. Findings in Brown's case. Filed by Judge Nott, Dec. 1, 1870. J. Randolph, ass't cl'k.

11 In the Court of Claims.

FERDINAND BROWN
vs.
THE UNITED STATES. } No. 2631.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon; of the application of the Att'y General, in behalf of the United States, for the allowance of an appeal, as filed in the clerk's office 20th August, 1870, and of the order of the Chief Justice, at chambers, allowing the same; of the findings of fact and conclusions of law upon which the court founded its judgment.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this 3d day of December, 1870.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 320. The United States, appellants, vs. Ferdinand Brown. Court of Claims. Filed 3d December, 1870.